

40th Round Table on Current Issues of International Humanitarian Law

“The Additional Protocols 40 Years Later: New Conflicts, New Actors, New Perspectives”

Sanremo, 7-9 September 2017

Captain Lotta Ekvall, Gender Advisor, Gender Section to the Office of the Secretary-General, Organization for Security and Co-operation in Europe

Gender Perspectives on IHL

- This panel will consider what it means to integrate a gender perspective on IHL and whether the Additional Protocols (APs) allow for gender factors to influence the application of the law in today's armed conflicts.
- The panel will also consider whether structural inequalities and gender stereotypes in society may lead to the application of IHL rules in a way that is inherently discriminatory, and whether there is a need to clarify or further develop the law to address these effects.
- Should parties to armed conflict integrate a gender perspective into the rules on the conduct of hostilities and, if so, how should they do so?
- For instance, what room is there for a gender perspective in the protection of “civilians”?
- What is the impact of a gender perspective in the application of the rules related to the treatment of persons deprived of their liberty?
- How should gender factors influence the legal review of new weapons pursuant to Article 36 of API?
- Is there a gender perspective in dealing with children participating in hostilities?

Allow me first to express my appreciation for the invitation to speak at this Round Table today. It is a great pleasure and honor for me to be here, among these distinguished and experienced speakers, to share with you some perspectives from foremost a military point of view on the integration of a gender perspective into IHL.

First of all, let me share with you my firm belief that there are no specific “gender questions” or issues but rather gender perspectives and gender dimensions in every question or situation. If gender perspectives are not considered this will inflict different consequences on men, women, boys and girls and risk perpetuating existing inequalities. The application of the law will have a discriminatory effect if we do not always consider and at all times assume that lives, experiences, security threats, freedom of movements, healthiness, and access to health care, resources and influence are not the same for men and women or boys and girls.

These differences and their consequences should be analyzed and regarded when conducting military operations and in all decision making and planning.

I will first elaborate a little on whether there is a need to clarify or further develop the law in order to mitigate discriminatory effects.

According to the Swedish Red Cross publication *'IHL and gender –Swedish experiences'*, by Cecilia Tengroth and Kristina Lindvall, there are some topics that are not covered in the laws or which would benefit from being developed such as strengthening the protection of IDPs when it comes to gendered demands. Furthermore, their research calls for an expansion of the interpretation of “direct humanitarian effects” of armed conflict that takes into account women’s specific challenges. These challenges are often regarded as outside the protective scope of IHL, but include issues that can be a direct consequence of armed conflict, such as, for example, protection from domestic violence.

The prohibition regarding the death penalties for “mothers of young children” is indeed gender specific but at the same time discriminatory as it does not apply to fathers of young children just to mention one example.

While having gender-neutral international humanitarian law can be problematic in specific cases, much more harmful is the gender-blind application of the law.

We have to admit and realize that the structures and inequalities during peace have a direct impact on our ability to ensure non-discriminatory protection of all persons protected under IHL during armed conflict. This emphasizes the importance of addressing a wide range of root causes of inequalities within societies and cultures in order to ensure a non-discriminatory application.

Gender perspectives on IHL provides the capacity to consider different experiences of both women and men in order to break down stereotypes about how men and women ‘should’ operate, and the complex ways in which conflict impacts upon them.

The other way of ensuring a gendered application of the law would be to explicitly address and cover every little detail of gender perspectives and gender dimensions within IHL. Which I believe still will not ensure non-discriminatory application as cultures and societies are neither alike nor unchangeable. Proper analysis of the specific context including gender perspectives and gender dimensions must make up the starting point and the foundation for all decisions, planning and conduct of military operations in order to capture the particulars of the actual context or situation. The ability to do so within Armed Forces is today limited, and a way to increase capability would be to use Gender Advisors and Gender Focal Points as part of all processes.

Therefore, integrating gender perspectives is not only an abstract discussion when talking about IHL application, but it is actually a prerequisite to ensure IHL lives up to the principle that adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.

Moving on to the more specific questions, about what room is there for a gender perspective in the protection of “civilians”?

MAJOR GENERAL Patrick Cammaert from the Netherlands stated, after his experiences as Commander of several missions in Africa, that, “It has probably become more dangerous to be a woman than a soldier in armed conflicts.”

The UN Security Council has articulated the link between sexual violence and the restoration of peace and security in the resolutions 1820 (2008) and 1888 (2009) 2106 (2016). Therefore most mandates of peace support operations now-a-days contain provisions for peacekeepers to protect civilians and most recently also to address sexual violence.

Protection of civilians cannot be delivered effectively without the understanding of the diverse vulnerabilities of men, women, boys and girls in a specific society or context.

So how should Armed Forces ensure a gendered approach to security needs when it comes to protection?

Knowledge of Gender-Based Violence (GBV) and Conflict-Related Sexual Violence (CRSV) among units has to be ensured through an adequate level of training and education in these matters along with an understanding of the context and situation deployed to. By listening to and engaging with the local population, men, women, boys and girls their opinions, priorities and vulnerabilities will appear and set out the foundation for interventions. Unless you know who is affected — women or men, girls or boys —and who among them is most at risk, at what time, place and situation, the protection provided may be off target.

To be present at the right place at the right time will prevent violence and abuse and protect the targeted group as for example being present early in the morning at the road to the market where women travel to sell their products or collect firewood. Or being present in an area where young men are being forcibly recruited. Monitoring trends, propagation and search for early warning signs will indicate when protection measures should be put in place and which group in this specific situation is vulnerable.

Monitoring trends and propagation requires sex-disaggregated data and statistics when reporting. It will also allow further analysis of the theatre - as the military calls the area of deployment.

The Armed Forces are often the first on the spot, and often operate in remote areas where other organisations have no presence. Therefore, the reporting part also becomes very important when it comes to Sexual Exploitation and Abuse (SEA).

For example, if we look at the situation in Kosovo today, there has been little or no justice for the many survivors of sexual violence during the war. One part of that problem relates to the difficulties of proving what happened but of course there are other implications such as a resistance to come forward due to the stigma and prevailing gender roles. But if it could be proven maybe several more would be willing to come forward. The delicacy and sensitivity

surrounding these matter call for further development of standards of reporting along with the procedures of how to secure information and data, and the modalities of information sharing, also ensuring that the reporting is held up as evidence in courts. It will also support the efforts of ending impunity for CRSV when able to address the topic during peace negotiations and mediation and with the knowledge, evidence and statistics concerning its prevalence. It's only when the perpetrators are punished that such behavior will stop.

Ensuring Freedom of Movement (FoM): making sure that all members of society can move freely around and have access to whatever resources they might need, being water wells, health institutions or maybe IDP camps.

In order to ensure assistance to survivors the personnel must be aware of where to find and how to access existing health care facilities, safe havens and the judicial system but they must also be informed about which organisations are active in the area and their field of work.

What is the impact of a gender perspective in the application of the rules related to the treatment of persons deprived of their liberty?

Women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women. During the recent migrant flow Sweden learnt about certain challenges when it came to holding families together. What is the practice when it comes to child marriage where the spouse is actually a child and was maybe forced to marry? Marrying someone under the age of 18 is not allowed in Sweden. Are they to stay together or be held separately? And if there are also children involved-should they be kept with the father or the mother who is also a child?

Furthermore, in order to be able to safeguard health and hygiene of detained persons one has to be aware of the different needs of men and women where women might need access to reproductive health care.

Should parties to armed conflict integrate a gender perspective into the rules on the conduct of hostilities and, if so, how should they do so?

Again the answer for me is of course they should and the means to do it starts again with a proper gender analysis. One has to understand who does what, where and when in order to abide by the principles of distinction, proportionality and precautions. An operation can not be seen as successful whilst at the same time breach the principles of IHL.

To adjust the time for operations, alert if possible in advanceso people could leave the area, or actually abort operations are options one could take into consideration along with the choice of methods and weapons.

The same principles, distinction, proportionality and precautions very much come into play when it comes to, for example, Crowd Riot Control. You can not apply the same amount of

force to elderly women, pregnant women or children as to big grown up men. Without knowing if and how a planned measure of protection or means or methods of warfare affect men, women or children differently, it is impossible to act without risking that the action will be either inadequate or discriminatory in a way that could be avoided by another similar action.

Which led up to the question of how should gender factors influence the legal review of new weapons pursuant to Article 36 of API?

Different weapons are used for different purposes, so when prioritising which type of weapon to develop gender dimensions have a part in the equation. By knowing who does what, where and when through a gender analysis it is possible to assess the impact on women, men, boys and girls. If they have different patterns of movement or perform their duties in different areas or under different circumstances - do they work indoors or out in the fields - will enable an estimate of how exposed different categories are to that particular kind of weapon.

Before coming back to what it entails for Armed Forces to fully integrate and implement a gender perspective there is the final question: is there is a gender perspective in dealing with children participating in hostilities?

A total nightmare for most soldiers: on one side a potential threat on the other hand a child. It creates very mixed feelings and also contradictory emotions. Soldiers are trained to react to threats but their hearts may react differently. Due to gender roles I do think it is even more complicated if the child soldier is a girl. The reason for taking part in the hostilities might be different and most of them are likely to be forced but by different means. The law stipulates that children affected by armed conflict are entitled to special respect and protection and in addition, the UN Security Council, UN General Assembly and UN Commission on Human Rights frequently require the rehabilitation and reintegration of children who have taken part in armed conflict. Here again one must be aware of the different vulnerabilities of girls and boys and what security risks they are likely to be exposed to. Furthermore, concerns have been raised that the type of experiences specific to girl soldiers, such as sexual exploitation in the form of forced marriages, forced child-bearing and domestic slavery, are not expressly covered by API's prohibition on using children under 15 to take 'direct part in hostilities', nor by the Optional Protocol to the Convention on the Rights of the Child along with the existing gender roles which causes different stigmas for boys and girls if they take part as soldiers in hostilities and therefore require a totally different rehabilitating process.

Now back to the question of what Armed Forces have to do in order to gender mainstream its organizations to ensure that gender perspectives and gender dimensions are fully integrated in planning, conduct and evaluation of operations and included in all decision

making processes. (Which are also applicable to any organization in order to accomplish change)

First of all, the Leadership level has to have a positive and supporting attitude and understanding of the importance of applying gender perspectives and including gender dimensions. They must be informed and educated about the benefits of integrating gender perspectives and their obligation to implement the UN resolutions on “Women Peace and Security”.

Secondly, the institutionalization of the integration of gender perspectives and gender dimensions within doctrines, policies and directives, plans and orders from the very highest level down to the concrete, practical procedures and practical advice to personnel in the fields must be fulfilled.

Thirdly, education and training of subject matter experts such as Gender Advisors, as well as a middle leader and other categories of personnel must be conducted. Gender perspectives and gender dimensions as a natural, integrated part of all education, training and exercises throughout the system must also be supported.

Resources have to be allocated and a budget available for this purpose, meaning that it requires creating positions within the organizations and also allowing personnel to take part in education, training and other development work. From what I have seen, almost all organizations struggle with the implementation part even when the policies, guidelines and directives are there. If the practitioners, or in military terms, the tactical levels are not included and involved, very little will happen. They are the ones carrying out the tasks in the field- if they are gender blind so is the mission/organization.

Furthermore, in order to constantly develop concepts and adapt to a world in transformation, documentation and evaluation of efforts should be conducted along with the collection of sex-disaggregated statistics, writing reports and having lessons learned processes which include gender perspectives and gender dimensions. This will also enable research work.

The number of women is often a scarce commodity within today’s Peace Support Operations and it is a problem we have to address if we want to succeed in our efforts to provide peace and security. We need mixed teams who can address any situations they encounter in their daily work no matter who the person they are dealing with - men, women, boys or girls - and under any circumstances.

Therefore, the question of how to attract and retain more women within the Armed Forces is imperative. Giving them the same possibilities and opportunities as men and also revising and reflecting on qualifications and requirement standards and making sure they are valid

and relevant so the very resources which are so desperately needed in order to enable a non-discriminatory response are not excluded.

Last but not least I would like to bring up the “clause” of military advantage or military necessity. From my point of view it gives military commanders an opportunity to go ahead with more indiscriminate attacks if not handled and monitored properly and calls for a more regulated approach. A force unaware of gender dimensions or gender blind could afflict devastating consequences to specific categories of the civilian society and society as a whole if they do not have the ability to assess the gendered impact of their operations.

Just let us hypothetically say that if the loss of 30 lives when conducting a strike against a target which is considered important to fight down from a military point of view is acceptable would it still be acceptable if the victims were all men or all women from a village? The consequences to that particular community would be totally different to their survival if a cross section of the population was involved or a specific category of the population was affected.

A long list, but it is not until each and one of these conditions are fulfilled that we can say that the Armed Forces or any organization have the capability to ensure a non-discriminatory application of IHL, and that will not happen overnight.

Thank you very much for your attention.